conspirators, applied to one of their courts, sitting as a court of equity, for an injunction to restrain such obstruction and prevent carrying into effect such conspiracy. The injunction was granted.

The same power which can thus protect from physical interference the ordinary means of interstate transportation does not become powerless when the method of obstruction is less tangible though equally effective. Tax laws,[13] inspection laws,[14] and laws of other kinds [15] have been held unconstitutional whenever their operation has been such as to cast a direct burden upon interstate commerce.

It can hardly be contested that the effect of forged interstate bills of lading is to discredit and render hazardous the use of genuine interstate bills; or that the section of the statute in question is aimed to protect the business of dealing in genuine interstate bills. This can be its only purpose, and its provisions are calculated to effect that purpose. There is here no question of attempting to use the constitutional power to regulate commerce for an indirect object. The power is invoked only to protect business which it is a function of the national government to protect.

THE EFFECT OF REFERENCES IN A BILL OF EXCHANGE TO SHIPPING DOCUMENTS OR GOODS. — "The enormous volume of sales of produce by a vendor in one country to a purchaser in another has led to the creation of an equally great financial system intervening between vendor and purchaser, and designed to enable commercial transactions to be carried out with the greatest money convenience to both parties." [1] The vendor draws a bill of exchange and sells it, with the order bill of lading and insurance papers for the goods attached, to a bank or exchange house, thus getting his money immediately after shipment. Sometimes the draft is drawn on the purchaser, but where it is payable on time the exchange house is often unwilling to part with the collateral in return for an acceptance by a mercantile house, and it is common for the purchaser to arrange that a bank of high standing shall be drawee and accept the draft. On acceptance the shipping documents are surrendered to the acceptor, and the purchaser can make immediate sale of the goods so as to secure funds to pay the draft at maturity.

Bills of exchange secured in this way usually bear some reference to the attached documents or to the goods. It is convenient for all parties to be able to identify the bill as relating to a particular transaction and check the documents of title accordingly. Even after acceptance,

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[13] See Crenshaw *v.* Arkansas, 227 U. S. 389 (1913); Stockard *v.* Morgan, 185 U. S. 27 (1902), and cases cited therein.

[14] Brimmer *v.* Rebman, 138 U. S. 78 (1891); Minnesota *v.* Barber, 136 U. S. 313 (1890).

[15] International Paper Co. *v.* Massachusetts, 246 U. S. 135 (1918) (taxation on par value of the capital stock of a foreign corporation); Darnell *v.* Memphis, 208 U. S. 113 (1909) (a law exempting from taxation growing crops and articles manufactured from the produce of the state); Buck Stove, etc. Co. *v.* Vickers, 226 U. S. 205 (1912) (a law requiring certain statements from foreign corporations).

[1] Scrutton, L. J., in Guaranty *v.* Hannay, [1918] 2 K. B. 623, 659, gives an excellent description of the system.

when the documents have been detached, a bill which professes to be a "produce" bill founded on a commercial transaction gets a better market than a bill which shows nothing on its face and may be a "kite" or accommodation bill. It is very common, therefore, to find on the face of the bill a statement "pay . . . and charge same to the account of" certain specified commodities. A witness from the Guaranty Trust Company recently testified that in 23,000 bills in a period of five years, 93 per cent bore on their face these or similar words referring to the commercial transaction giving rise to the bill.[2]

The weak point in this system is evidently the bill of lading. Such documents get their validity merely from the signature of the carrier's agent at the shipping point, whose handwriting is not likely to be well known in the world of high finance. The shipper usually writes out the rest of the bill of lading himself on one of the blanks kept in his possession, and if he adds the name of a freight agent at the bottom, the fraud is not likely to be detected until the time arrives for the nonexistent goods to reach their stated destination. A few years ago, the firm of Knight, Yancey and Company of Decatur, Alabama, fell into the habit of accelerating the time for receiving payment for cotton sold by discounting a draft with a forged bill of lading for nonexistent cotton attached, and afterwards shipping actual cotton to correspond with the false document. The cotton arrived before the draft was due, so that the fraud was undiscovered. But one day there was no cotton to ship, innumerable forged bills of lading were outstanding, and Knight, Yancey and Company closed their business career by insolvency.

Like the jaunty testatrix who writes her own will, the perpetrator of colossal frauds furnishes plenty of employment for lawyers. Many of the drafts secured by forged documents had been accepted or paid before the absence of cotton was discovered. Who should bear the loss, the bankers who had discounted the drafts in reliance on the forged collateral, or the buyers who had authorized acceptance and payment in order to obtain the cotton which never existed?[3]

It is settled law in cases where the draft makes no reference to the collateral that the loss falls on the drawee (or his principal), if the draft has been accepted or paid. Money paid can not be recovered back, and the acceptor can get no relief on account of the mistake. The holder who presented the instrument is not liable as a warrantor of its genuineness or on any other ground.[4] There clearly is no warranty, for he does

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[2] Scrutton, L. J., in Guaranty *v.* Hannay, [1918] 2 K. B. 660.

[3] Knight, Yancey and Company, besides issuing forged bills of lading, persuaded a railroad freight-agent to sign bills of lading without receiving cotton, and used these also to obtain money. It was held that the bank discounting such bills could not recover from the railroad. Louisville & N. R. R. Co. *v.* National Park Bank, 188 Ala. 109, 65 So. 1003 (1914). The carrier would now be liable under § 22 of the Federal Bills of Lading Act (Pomerene Act), August 29, 1916, c. 415; 39 U. S. STAT. 542; 8 U. S. COMP. STAT. 1916, § 8604 *kk*.

[4] WILLISTON ON SALES, § 435 (1909), collects the authorities. Hawkins *v.* Alfalfa Co., 152 Ky. 152, 153 S. W. 201 (1913); Central Mercantile Co. *v.* Oklahoma State Bank, 83 Kan. 504, 112 Pac. 332 (1910); Seattle National Bank *v.* Powles, 33 Wash. 21, 73 Pac. 887 (1903); First National Bank *v.* Mineral, etc. R. R., 133 S. W. 1099 (Tex. Civ. App. 1911); Burrton State Bank *v.* Pease-Moore Co., 163 Mo. App. 135, 145 S. W. 508 (1912) *semble;* Tapee *v.* Varley, Wolter Co., 184 Mo. App. 470, 171

not sell the bill of lading to the drawee, but merely relinquishes his lien in exchange for the new security afforded by the acceptance.[5] It has been argued that he ought to be liable on quasi-contractual grounds to refund money paid under a mistake of fact as to the genuineness of the bill of lading,[6] and that the cases are consequently wrong. Dean Ames, however, points out that under the doctrine of *Price* v. *Neal* [7] the principle of unjust enrichment can not be applied to shift this loss from one innocent person to another.[8] The drawee has paid value for the draft and bill of lading, but so has the holder, and when the holder has the money the drawee possesses no superior equity to take it away from him. Those who reject Dean Ames's explanation of *Price* v. *Neal* and rest that case on the duty of the drawee to find out that the drawer's signature has been forged [9] can not support the bill of lading cases, in the same way, for a drawee in England is certainly in no position to pass upon the genuineness of the signature of an American freight agent. The only sound explanation, apart from Dean Ames's, is that a *bonâ fide* purchaser of a genuine bill of exchange should not be affected by extrinsic transactions between the drawer and drawee,[10] even though they involve fraud [11] or failure of consideration.[12] It is just as if the drawee had accepted or paid the draft under a mistake about the financial standing of the drawer or the value of collateral copper stock.[13]

The Knight, Yancey and Company cases, however, introduce an

S. W. 19 (1914); Spencer & Co. *v.* Bank of Hickory Ridge, 115 Ark. 326, 171 S. W. 128 (1914) *semble;* American National Bank *v.* Warren, 96 Misc. 265, 160 N. Y. Supp. 413 (1916), *accord.* The principle is recognized by all the cases on drafts which refer to the goods. See notes 14, 15, *infra.* The holder of the bill of lading for security is not a warrantor under § 37 of the Uniform Bills of Lading Act, enacted as § 36 of the Federal Pomerene Act, August 29, 1916, c. 415; 39 U. S. STAT. 544; 8 U. S. COMP. STAT. 1916, § 8604 *rr.* The contrary doctrine of warranty by the holder was adopted in a few cases which have been overruled except perhaps in Mississippi. WILLISTON, *loc. cit.;* Cosmos Cotton Co. *v.* First National Bank, 171 Ala. 392, 54 So. 621 (1911).

[5] James Barr Ames, 4 HARV. L. REV. 302, LECTURES ON LEGAL HISTORY, 270, quoted by Pickford, L. J., in Guaranty *v.* Hannay, [1918] 2 K. B. 623, 631 (C. A.); Warrington, L. J., *Ibid.*, 653.

[6] KEENER, THE LAW OF QUASI-CONTRACTS, 154, note: "It is impossible to reconcile with the principles that have been considered in this chapter many of the results reached."

[7] 3 Burr. 1354 (1762). The drawee of a bill of exchange who has paid it can not recover the money from the holder, although the drawee's name is forged. See Lord Mansfield's opinion.

[8] James Barr Ames, "The Doctrine of *Price* v. *Neal*," 4 HARV. L. REV. 303, LECTURES ON LEGAL HISTORY, 393, citing among other cases Leather *v.* Simpson, L. R. 11 Eq. 398 (1871); First National Bank *v.* Burkham, 32 Mich. 328 (1875). See also Guaranty *v.* Hannay, 210 Fed. 810, 813 (C. C. A. 2d, 1913); *Ibid.*, [1918] 2 K. B. 623, 633, 664 (C. A.). In Munson *v.* De Tamble, 88 Conn. 415, 91 Atl. 531 (1914), the holder was held liable as a seller.

[9] WOODWARD, THE LAW OF QUASI-CONTRACTS, § 91.

[10] WOODWARD, *loc. cit.*, and cases cited; Tolerton *v.* Anglo-California Bank, 112 Iowa 706, 84 N. W. 930 (1901).

[11] Fort Dearborn *v.* Carter, 152 Mass. 34, 25 N. E. 27 (1890); Alton *v.* First National Bank, 157 Mass. 341, 32 N. E. 228 (1892); Heuertematte *v.* Morris, 101 N. Y. 63 (1885), 4 N. E. 1; Southwick *v.* First National Bank, 84 N. Y. 420, 433 (1881).

[12] Guaranty *v.* Hannay, [1918] 2 K. B. 623, 632, 662 (C. A.); Robinson *v.* Reynolds, 2 Q. B. Rep. 196, 211 (1841); 1 DANIEL, NEGOTIABLE INSTRUMENTS, 6 ed., § 174 *a.*

[13] Springs *v.* Hanover National Bank, 209 N. Y. 224, 233, 103 N. E. 156, 158 (1913).

interesting variation of this question. Most of the drafts involved contained references to cotton. Since there was no cotton, did such a reference give the drawee the right to rescind his acceptance or payment? It was easy to decide that the mere use of the word "cotton" lithographed on the draft effected no alteration in the general rule that the drawee bears the loss.[14] Other drafts described the supposed cotton in specific terms by the number and marking of the bales — *e. g.*, "charge same to account of $\frac{100}{\text{R. S. M. I.}}$ bales of cotton." After seven years of litigation on both sides of the Atlantic, the English Court of Appeals has recently decided that in spite of these words the loss still falls on the buyer and not on the lien-holding bank.[15] The decision expressly determines the construction of section 3 of our Negotiable Instruments Law on the subject, which is declared to reach the same result as the English law, so that the case ought to have much weight if the question ever arises again in American courts.[16]

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[14] Springs *v.* Hanover, *supra;* Varney *v.* Monroe, 119 La. Ann. 943, 44 So. 753 (1907) — "25b/c," *i. e.*, bales of cotton, *accord.*

[15] Hannay and Company, cotton brokers at Liverpool, bought cotton from Knight, Yancey and Company of Alabama, to be paid by shippers' drafts upon the Bank of Liverpool, the buyer guaranteeing acceptance and payment if the shipping documents proved to be in order. In pretended performance of this contract Knight, Yancey and Company forged a through bill of lading running to shippers' order, and attached it to a draft drawn by themselves for the contract price upon the Bank of Liverpool, worded: "Sixty days after sight this first of exchange (second unpaid) pay to the order of ourselves Fourteen hundred and sixty four pounds and nine shillings value received, and charge same to account of $\frac{100}{\text{R. S. M. I.}}$ bales of cotton." The draft also contained, in the margin, the date of the sale contract and a reference to the quality of the cotton. The letters R. S. M. I. purported to be the marks upon the bales. The draft and bill of lading were duly indorsed and sold in New York to the Guaranty Trust Company, an exchange house. The trust company presented the bill to the drawee bank, which accepted under instructions from the buyers after inspection by them of the shipping documents, which were detached and retained by the acceptor. The trust company sold the accepted bill. Some suspicions were afterwards aroused as to the genuineness of the bill of lading, but the acceptor felt itself obliged, against the instructions of the buyer, to pay the ultimate holder of the draft at maturity, and debited the buyers' account with the amount. The buyers, on discovering the forgery, sued the Guaranty Trust Company in the United States Circuit Court to recover the amount paid. A demurrer to the complaint was overruled, Noyes, J., holding that the draft was conditional upon the existence of the cotton. Hannay *v.* Guaranty Trust Co., 187 Fed. 686 (C. C. S. D. N. Y., 1911). At the trial a verdict was directed for the buyers, but on appeal the Circuit Court of Appeals held that English law governed and that it had been proved at the trial that under English law the draft was unconditional and the money could not be recovered. Judgment was accordingly reversed and a new trial ordered. Guaranty Trust Co. *v.* Hannay, 210 Fed. 810 (C. C. A. 2d, 1913). The Guaranty Trust Company thereupon sued the buyers in England to obtain a declaration that there was no liability to the buyers. The buyers counterclaimed for the amount of the draft. After trial Bailhache, J., held that the question whether the draft was conditional was governed by American law, under which it was conditional, and allowed the buyers to recover. Guaranty Trust Co. *v.* Hannay, [1918] 1 K. B. 43. On appeal this decision was reversed and the trust company held not to be liable on any ground. The Court of Appeal found the draft to be unconditional, even if American law governed. Guaranty Trust Co. *v.* Hannay, [1918] 2 K. B. 623 (C. A.).

[16] The various decisions in this litigation abstracted in note 15 raise an odd problem in the conflict of laws. The upper American court applied English law, while both English courts applied American law in part. It seems that the English Court of

The arguments in favor of the buyer are that the acceptance is conditional upon the delivery of the cotton, and otherwise imposes no obligation upon the drawee; and that the draft is conditional and not negotiable, so that the acceptor can have all the defenses against a *bonâ fide* purchaser which it has against the drawer-payee.[17] If the acceptance expressly provided for the existence of the cotton or the genuineness of the bill of lading, the acceptor would clearly not be liable. The same result has been reached when the acceptance was "against endorsed bills of lading" for specified goods.[18] An acceptance in general terms would also be treated as conditional, if the drawer's order should require payment only in case of existence of the goods, since the acceptance is construed according to the tenor of the drawing.[19] It was urged that the words "charge to the account of" specified cotton import such a condition in the drawing and consequently in the acceptance.

At this point a distinction must be taken between classes of conditions. The reference in a draft to collateral which has been given as security for the draft or the mere attachment of collateral documents to the draft does impose a condition that the collateral shall be surrendered to the drawee on acceptance,[20] or, in some instances, upon pay-

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Appeal is right; that the question whether the bill is unconditional and negotiable is determined by the place of drawing (New York, or possibly Alabama), Amsinck *v.* Rogers, 189 N. Y. 252, 266, 82 N. E. 134 (1907), while the quasi-contractual right of the acceptor to revoke its acceptance and payment because of implied warranty, representation, mistake, or failure of consideration is determined according to the only law which could create such a right, *viz.*, that of England, where the acceptance and payment took place. The solution was rendered much easier by the court's finding that the law of England and the United States were the same. If the instrument was found to be conditional by American law, it would then have been necessary to construe § 72 of the Bills of Exchange Act, especially the clause which allows a foreign bill in the English form to be treated as valid between English parties for purposes of enforcement. Would this also apply to the recovery of money paid under such a bill? See the remarks of Scrutton, L. J., in [1918] 2 K. B. 670, and those of Bailhache, J., below in [1918] 1 K. B. 55.

[17] Hannay *v.* Guaranty, 187 Fed. 686 (S. D. N. Y. 1911); Guaranty *v.* Hannay, [1917] 1 K. B. 43, 54, 55. But even if the draft were conditional and the acceptor could revoke its acceptance, it is doubtful if this ought to alter the decision. After notice of the forgery, the acceptor paid regardless of the alleged defense and contrary to the instructions of its principal, the buyer. As this was a voluntary payment, it could not be recovered, and the buyer's remedy would be against the acceptor. There is a further question, — even if the recipient of payment is liable to refund, why should the Guaranty Trust Company, a previous owner of the draft, be so liable? Pickford and Warrington, L. JJ., thought the buyer could not recover in any event. Guaranty *v.* Hannay, [1918] 2 K. B. 623, 648, 653 (C. A.).

[18] Guaranty *v.* Grotrian, 114 Fed. 433 (C. C. A. 2d, 1902), affirming 105 Fed. 566 (S. D. N. Y. 1900). The correctness of this discussion is open to serious question, on the ground that the language of the acceptance was satisfied by the surrender of bills of lading for the specified goods, though forged. "Bills of lading" in a contract does not necessarily mean genuine bills of lading. A buyer can not complain if the drawee, his agent, when instructed to accept a draft with "bill of lading" attached does so on the faith of a forged bill of lading. Woods *v.* Thiedemann, 1 H. & C. 478 (1862); Ulster Bank *v.* Synnott, I. R. 5 Eq. 595 (1871). The same construction applies to a letter of credit agreeing to pay drafts with a "bill of lading" for cotton attached. Young *v.* Lehman, 63 Ala. 519 (1879). See also Smith *v.* Vertue, 30 L. J. C. P. (N. S.) 56 (1860); 38 L. R. A. (N. S.) 747 note.

[19] Guaranty *v.* Grotrian, *supra*.

[20] Shepherd *v.* Harrison, L. R. 5 H. L. 116 (1871); National Bank *v.* Merchants'

ment. Such a condition is a mere incident to collection, which does not impair negotiability. But a second class of conditions, relating to extrinsic facts, does impair negotiability. For example, the instrument may be payable out of a particular fund. Payment need not be made in full unless the specified fund is adequate, so that the instrument is not payable at all events and is not negotiable.[21] Such a construction could hardly be given to international cotton drafts, which are clearly not payable out of the proceeds of the cotton, but must be met regardless of a fall in the market.[22] If these drafts throw the loss on the presenting bank because of a condition, that condition must relate to the genuineness of the attached bill of lading. It would be odd if the words on the Knight, Yancey and Company draft imported such a condition when they do not mention the bill of lading at all, but it was urged that they describe cotton, and so might be taken as requiring its existence. Such a condition would not be one of the first class just discussed, for it does not concern the surrender of collateral on acceptance. The bill of lading was the collateral given when the draft was issued, not the cotton; the document and not the cotton was to be handed to the drawee on acceptance. The cotton is an outside fact, and a condition relating to it would consequently render the draft non-negotiable, so that a *bonâ fide* purchaser would be subject to all sorts of equitable defenses and not merely to defects in the bill of lading. Such a result would indeed startle American and English bankers in view of the enormous number of such drafts. Drafts in similar language have repeatedly been held negotiable.[23] The reference to the cotton simply earmarks the bill of exchange, makes it correspond to the bill of lading, informs the drawee that shipping documents for the goods described are to be surrendered on acceptance, and mentions the source from which he may expect to reimburse himself. It indicates that the draft is drawn to carry out a cotton transaction and is not a finance or accommodation draft.[24] The principal case reaches a sound mercantile result in holding that this very frequent reference to the goods in bills of

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Bank, 91 U. S. 92 (1875); Lanfear *v.* Blossman, 1 La. Ann. 148, 155 (1846); 30 HARV. L. REV. 514.

[21] NEGOTIABLE INSTRUMENTS LAW, § 3; Munger *v.* Shannon, 61 N. Y. 251 (1874). In Lowery *v.* Steward, 25 N. Y. 239 (1862), this draft was held payable out of a fund: "Please pay . . . on account of 24 bales cotton shipped to you, as per bill of lading, by steamer *Colorado*, enclosed to you in letter." The court, however, took the terms of the letter into consideration. Hence the decision is of no authority in Guaranty *v.* Hannay. See [1918] 2 K. B. 641, 643; Whitney *v.* Eliot, 137 Mass. 351, 355 (1884).

[22] [1918] 2 K. B. 637, 656, 667. Similar provisions in produce drafts have been held not to be an equitable assignment of the goods in Robey *v.* Ollier, L. R. 7 Ch. App. 695 (1872); *In re* Entwhistle, L. R. 3 Ch. D. 477 (C. A. 1876); Brown *v.* Kough, L. R. 29 Ch. D. 848 (C. A. 1884). *Contra*, National Bank *v.* Merchants' Bank, 91 U. S. 92, 95 (1875) *semble*.

[23] Martin *v.* Brown, 75 Ala. 442 (1883) — "charge same to a/c of 502 bales of cotton per steamer *J.*"; Bank of Guntersville *v.* Jones, 156 Ala. 525, 46 So. 971 (1908) — "charge to account of one bale of cotton, bill of lading attached;" Whitney *v.* Eliot, 137 Mass. 351 (1884) — "Charge the same to account of 250 bbls. meal *ex* schooner *A*"; Waddell *v.* Hanover, 48 N. Y. Misc. 578, 97 N. Y. Supp. 305 (1905), — "400 c/a R. L. No. 3362 *via* A. R. R. B. L. direct," meaning eggs. See cases in note 22. *Contra*, Lanfear *v.* Blossman, 1 La. Ann. 148 (1846), *semble* — "Bill of lading of 344 LB. cotton per P. attached hereto."

[24] Pickford, L. J., in [1918] 2 K. B. 636.

exchange [25] does not render them conditional or non-negotiable, and alters in no way the general principle that after acceptance or payment the loss from forgery or other defects in the collateral falls on the drawee or buyer.[26]

The great losses caused by the Knight, Yancey and Company frauds have led to some steps toward the establishment of a validation bureau at which bankers can present collateral cotton bills of lading and have the agents' signatures checked by the railroads. It has also been suggested that surety companies guarantee the genuineness of the documents.[27] In some such way it may be possible to protect all parties from loss.

PROPERTY IN NEWS. — Courts too often formulate a rule which is exclusive as well as inclusive and which tends to become a rigid guide for the future. Then begins the process of puncturing the inadequate rule with exceptions, new rules, until finally the light shines clear through the old doctrine and a principle takes its place.[1] The United States Supreme Court, in the recent case of *International News Service* v. *The Associated Press*,[2] has gone a long way toward establishing as law the principle that no one shall be permitted to appropriate to himself the fruits of another's labor.

This proposition would seem to carry conviction in its mere statement. Property rights in tangible objects are, of course, universally protected. There is discernible in the cases, however, a tendency to distinguish between values inhering in some palpable form which can be physically dominated and values of a less tangible character; and this, although the latter may have cost vast sums and, given legal protection, have vast

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[25] See page 561, *ante*, and note 2.

[26] In accord with Guaranty *v.* Hannay, *supra*, note 15, are Springs *v.* Hanover and Varney *v.* Monroe, *supra*, note 14, and Bank of Guntersville *v.* Jones, 156 Ala. 525, 46 So. 971 (1908) (goods subject to landlord's lien); Woddell *v.* Hanover, 48 N. Y. Misc. 578, 97 N. Y. Supp. 305 (1905) — no goods shipped (not a bill of lading case); 18 Col. L. Rev. 480. *Contra*, La Fayette *v.* Merchants' Bank, 73 Ark. 561, 84 S. W. 700 (1905) (forged bill of sale on back of draft); and *dicta* in Hoffman *v.* Bank, 12 Wall. (U. S.) 181, 189, 190 (1870), and Guaranty *v.* Grotrian, note 18, *supra*.

[27] 27 BANKING L. J., 763, 937; 28 *Ibid.*, 450, 710, 787.

[1] *E. g.*, contrast the able opinions of Sanborn, Circuit Judge, in Huset *v.* J. I. Case Threshing Machine Co., 120 Fed. 865, 57 C. C. A. 237 (1903), and of Cardozo, J., in MacPherson *v.* Buick Motor Co., 217 N. Y. 382, 111 N. E. 1050 (1916).

[2] U. S. Sup. Ct., December 23 (October Term, No. 221), 1918. The court granted an injunction against, *inter alia*, the taking of news from early editions of complainant's newspapers and from its bulletin boards and selling it to defendant's customers, until after its news value had disappeared. The court treated the case as one of unfair competition, speaking of a limited or *quasi*-property in news. Mr. Justice Holmes dissented in part; he took the ground that there are some values which the law does not protect, including that in gathered news, but he was of the opinion that this was a converse case of "passing off," where the defendant passed off another's goods as his own, and that an injunction might be granted against the use of news gathered by the complainant without giving credit. Mr. Justice Brandeis, in dissenting, admitted the propriety of some remedy; he argued that the granting of relief would require the making of a new rule, and without denying the court's right to make new rules on the analogy of old ones in order to cope with a new wrong, he maintained that, there being probably a public interest involved, legislatures could best deal with the problem.